

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

1. STATE OF OKLAHOMA, ex rel.)
W.A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL OF)
THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT, in)
his capacity as the TRUSTEE FOR)
NATURAL RESOURCES FOR THE)
STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

05-CV-0329-JOE-SAJ

1. TYSON FOODS, INC.,)
2. TYSON POULTRY, INC.,)
3. TYSON CHICKEN, INC.,)
4. COBB-VANTRESS, INC.,)
5. AVIAGEN, INC.,)
6. CAL-MAINE FOODS, INC.)
7. CAL-MAINE FARMS, INC.)
8. CARGILL, INC.)
9. CARGILL TURKEY PRODUCTION,)
10. GEORGE’S, INC.,)
11. GEORGE’S FARMS, INC.,)
12. PETERSON FARMS, INC.,)
13. SIMMONS FOODS, INC., and)
14. WILLOW BROOK FOODS, INC.,)

Defendants,)

CARGILL TURKEY PRODUCTION, LLC,)

Third-Party Plaintiff,)

vs.)

CITY OF TAHLEQUAH; CITY OF)
WESTVILLE,)

Third-Party Defendants.)

**ANSWER OF CITY OF TAHLEQUAH TO THIRD PARTY COMPLAINT OF
CARGILL TURKEY PRODUCTION, LLC**

COMES NOW the City of Tahlequah and for its Answer to Third Party Plaintiff’s Complaint and alleges and states as follows:

I. BACKGROUND

1. Paragraph 1 of Third Party Plaintiff's Complaint is admitted.
1. Paragraph 2 of Third Party Plaintiff's Complaint is denied.
1. Paragraph 3 of Third Party Plaintiff's Complaint is denied.
1. Paragraph 4 of Third Party Plaintiff's Complaint is denied.

II. PARTIES

5. The Defendant, City of Tahlequah is without sufficient information to admit or deny the allegations contained in Paragraph 5 of Third Party Plaintiff's Complaint. Those allegations are therefore denied.

III. THIRD PARTY DEFENDANTS

6. The Third Party Defendant, City of Tahlequah admits that it is a chartered municipal corporation in the State of Oklahoma. The remainder of Paragraph 6 of Third Party Plaintiff's Complaint is denied.
7. The Third Party Defendant, City of Tahlequah is without sufficient information or knowledge to admit or deny the contents of Paragraph 7 of Third Party Plaintiff's Complaint. The allegations in Paragraph 7 of Third Party Plaintiff's Complaint are denied.

IV. JURISDICTION AND VENUE

8. The Third Party Defendant, City of Tahlequah admits that this Court has subject matter jurisdiction in this matter. The remainder of Paragraph 8 of Third Party Plaintiff's Complaint is denied.
9. Paragraph 9 of Third Party Plaintiff's Complaint is denied.

V. STATEMENTS OF FACT

A. The Underlying Lawsuit

10-31. The Defendant City of Tahlequah admits that the State of Oklahoma has made these allegations in its Amended Complaint.

B. General Allegations Regarding Third Party Defendants

32. Paragraph 32 of Third Party Plaintiff's Complaint is admitted.
33. Paragraph 33 of Third Party Plaintiff's Complaint is admitted.
34. This Defendant is without sufficient information or knowledge to admit or deny the allegations contained in Third Party Plaintiff's Paragraph 34. The contents of

that Paragraph is therefore denied.

35. Paragraph 35 of Third Party Plaintiff's is admitted.
36. Paragraph 36 of Third Party Plaintiff's Complaint is denied.
37. Paragraph 37 of Third Party Plaintiff's Complaint is denied.
38. Paragraph 38 of Third Party Plaintiff's Complaint is admitted.
39. Paragraph 39 of Third Party Plaintiff's Complaint is denied.
40. Paragraph 40 of Third Party Plaintiff's Complaint is admitted.
41. Paragraph 41 of Third Party Plaintiff's Complaint is denied.
42. Paragraph 42 of Third Party Plaintiff's Complaint is denied.
43. Paragraph 43 of Third Party Plaintiff's Complaint is denied.
44. Paragraph 44 of Third Party Plaintiff's Complaint is denied.
45. Paragraph 45 of Third Party Plaintiff's Complaint is denied.
46. Paragraph 46 of Third Party Plaintiff's Complaint is denied.
47. Paragraph 47 of Third Party Plaintiff's Complaint is denied.
48. Paragraph 48 of Third Party Plaintiff's Complaint is admitted.
49. Paragraph 49 of Third Party Plaintiff's Complaint is admitted.
50. Paragraph 50 of Third Party Plaintiff's Complaint is admitted.
51. Paragraph 51 of Third Party Plaintiff's Complaint is denied.
52. Paragraph 52 of Third Party Plaintiff's Complaint is denied.
53. Paragraph 53 of Third Party Plaintiff's Complaint is admitted.
54. Paragraph 54 of Third Party Plaintiff's Complaint is denied.
55. Paragraph 55 of Third Party Plaintiff's Complaint is denied.
56. Paragraph 56 of Third Party Plaintiff's Complaint is denied.

PRAYER FOR RELIEF

The prayer for relief asserted by the Third Party Plaintiff is denied.

AFFIRMATIVE DEFENSES

1. That pursuant to Federal Rule 12 (B)3 that Venue is not proper in the United States District Court for the Northern District of Oklahoma in that this Defendant has not been accused of any activity that occurred in the Northern District of Oklahoma.
 2. That all of the Illinois River located within the State of Oklahoma and all of Lake Tenkiller are located in the Eastern District of Oklahoma.
 3. That approximately 12 of the named 160 Third Party Defendants have been accused of activities that occurred in the Northern District of Oklahoma.
 4. That the Tahlequah City Golf Course is not located in the Illinois River watershed. It is located in the Grand River watershed.
1. That the City of Tahlequah does not operated its own water and sewage disposal facilities. These are operated by an independent party.
 1. That the damages, if any, to the Third Party Plaintiffs were caused by the negligence or activities of Third Parties over whom this Defendant has no control.
 1. Failure to state a claim upon which relief can be granted.
 1. Lack of causation.

WHEREFORE, the Third Party Defendant City of Tahlequah prays that this Court dismiss the above captioned matter on the basis of improper venue as it relates to this Defendant. Further, the Defendant, City of Tahlequah prays that the Third Party Plaintiffs take nothing by their causes of action and that the Defendant be awarded all available legal and equitable relief as the Court may determine just, equitable, and proper under the facts and circumstances herein.

Respectfully submitted,
City of Tahlequah

By: _____

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CERTIFICATE OF SERVICE

I certify that on the 21st day of February, 2006, I electronically transmitted the attached document to the Clerk of the Court using the ECF system for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

Elizabeth C. Ward
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Mount Pleasant, SC 29464

C. Miles Tolbert
Secretary of the Environment
State of Oklahoma
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Oklahoma City, OK 73118

and

William H. Narwold
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PARK MEDEARIS